IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1208 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KOLI VASHRAM RAMSI

Appearance:

1. Criminal Appeal No. 1208 of 1986
Mr.K.P.Raval, learned Addl.P.P. for appellant No. 1
MR VH DESAI for Respondent No. 1-6 (Absent)

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The appellant State of Gujarat has preferred this Appeal and challenged the order of acquittal passed by the learned Sessions Judge, Junagadh acquitting the respondents - accused from the offence under Section 302 read with Sections 34 and 201 of the I.P.C. while disposing of Sessions Case No.89 of 1985 on 20.6.1986.

2. This Appeal reached for final hearing before us and as per order passed earlier on 24.6.1987 while admitting the Appeal, the accused were released on bail in view of bailable warrants issued against them.

3. Mr.K.P.Raval, learned Addl.P.P., appearing for the appellant took us through the paper book consisting of oral and documentary evidence led by the prosecution during trial and the judgment under challenge.

4. Mr.K.P. Raval, learned Addl.P.P., has contended before us that in view of the evidence led by the prosecution and more particularly as found from the evidence of P.W.6 Shri Kana Vira, who in turn has supported the prosecution case, who is an eye witness to the incident, the learned trial Judge was not right in discarding his evidence and by discarding his evidence, it has resulted into miscarriage of justice. He next contended that even the rope Article 2, which was used in commission of offence, was also discovered at the instance of the accused and by discarding this evidence, it has also resulted into miscarriage of justice. While referring to the medical evidence, it is the contention of Mr.Raval that even the cause of death, as per the medical evidence, is shown to be "due to Asphyxia due to strangulation". The case of the prosecution is accordingly proved that Bai Jahi was done to death and the death was due to strangulation. He accordingly urged that the Appeal filed by the State be allowed and further prayed to set aside the order of acquittal and convict the respondents accused for murder of Bai Jahi.

5. In light of the contentions raised before us and keeping in view the decision of the Apex Court, wherein the principle has been laid down by the Apex Court in appreciating the evidence when the acquittal Appeal is to be examined and the guidelines, which had been laid down, indicate that in normal course the court should not disturb the findings recorded by the learned trial Judge, which was based on appreciating the evidence, unless and until the same is perverse, accordingly we have to consider the contention of Mr.Raval in respect of the

appreciation of the evidence made by the learned trial Judge while acquitting the accused persons.

6. We will not discuss in length with regard to the evidence led by the prosecution as the evidence in respect of discovery and recovery of article 2 rope at the instance of the accused is not supported by the Panch witnesses and we will also not discuss in length the other evidence led by the prosecution, namely, the evidence of complainant Bhikha Vira, Khodu Rana - P.W.3 Police Patel, Rukhad Dana P.W.4 Sarpanch of the village, Vali Rana P.W.5 mother of the deceased and the evidence of the witnesses examined in respect of the investigation of the case.

7. Mohanbhai Thumar P.W.1 has deposed that on 2.8.1985 he was working as Medical Officer at Primary Health Centre, Delvada, Taluka Una and he received the dead body of Jahiben Naranbhai for post mortem. He noted the following external injury:-

"1. There was a ligature mark surrounding neck of the deceased. No other injury was found on me on any part of the body of deceased."

According to him the cause of death was Asphyxia due to strangulation and the injury found is sufficient in ordinary course of nature to cause death. The ligature mark is likely by rope Article 2. He has proved the post mortem note, which is at Exh.14.

7.1 As found from the cross examination that while doing the post mortem examination Doctor Joshi has assisted him. Injury marks of ligature were not bleeding. In column No.7 of the post mortem note, it is mentioned that all 15 bangles on the dead body were found intact and further that except the ligature mark on the neck, there were no external marks of injury. It means that there were no marks of struggle by the deceased prior to the death. He has also agreed that in case of suicide by hanging the ligature marks go slightly upwards behind the neck and further that the ligature mark found on the dead body was on the upper half part of the neck. The Medical Officer has also agreed that in case of death by strangulation and death by hanging, there is very thin difference. While referring to Medical Jurisprudence of Dr.Parikh he agreed that in the said Book at page 199 it is mentioned that in case of hanging there will not be any sign of struggle while in the case of strangulation there will be signs of struggle. The Doctor had agreed that in case of hanging the ligature mark is situated above the thyroid cartilage. On going through the post

mortem examination, the external and internal injuries were noted down by the Doctor and the cause of death is shown to be "Asphyxia due to strangulation". As found from the evidence of Doctor, he does not agree that in the present case there might have been suicidal partial hanging. In light of the medical evidence, so far as death of deceased Jahi is concerned, the same is found to be due to Asphyxia due to strangulation.

8. On going through the evidence of P.W.2 Bhikha Vira it is found that his house and his brother's house is very close and deceased Jahi was married to accused No.4 Naran before 4 years at village Paladi and she had a daughter. She was not happy at the house of her husband and all the accused persons were residing in joint family. According to him on the day of incident deceased Jahi had come to her parental house with her child. His house and his brother Rana's house is situated in one line (In Ossari). He saw Jahi coming at his brother's house. His nephew Kana, brother of deceased Jahi, took Jahi back to her husband's house at about 8.0 P.M. Accused No.1 Vashrambhai had come to the house of his brother Rana and informed him that "come with him as something has occurred to Jahi". Thereafter, Vashram had left to his house and the witness and his wife and his brother Rana and his wife had gone to the house of accused No.1 Vashram where Jahi was found lying in a cot and she was covered with red colour cloth. The mother of Jahi had while removing the said cloth from the face side found that body of Jahi was very cold and she was found dead. They have told Vashram that within a short time Jahi had visited their house and what had happened to her and Vashram had told them that Jahi had a vomitting. Immediately his brother and his wife started weeping and accordingly he informed that "we do not want to do anything and we will report just to Sarpanch as well as to Police Patel". Thereafter, they had approached the Police Patel of the village as well as to Sarpanch. It is further found from his evidence that the witness and Khodu Rana - Police Patel of the village had gone to Una Police Station for filing complaint. Before filing the complaint at the Police Station, the Police Patel of the village as well as Sarpanch had also visited the house of the accused Vashram for confirmation. He gave complaint to the police, which was written down by the Police. He is uneducated and he is not in a position to read or write nor even sign. The complaint was read over to him and he put his thumb mark. The Police has recorded his further statement and at the time of drawing inquest panchanama by the Police he was present.

8.1 From the evidence of complainant, who is the uncle of deceased Jahi, it transpires that Jahi had on the very day visited at the house of his brother with her child at 7.0 P.M. and further that Jahi was taken back to the house of the accused persons by Shri Kanabhai. The accused No.1 had on the same night come and informed Rana that something has occurred to Jahi for which he requested to come with him. When they reached at the house of accused No.1 Vashram they saw Jahi on a cot and the red colour cloth was covered on her and Jahi was found dead. The complainant first had gone to the house of Sarpanch as well as to the Police Patel and in the company of Police Patel he had gone to Police Station at Una for filing complaint. As found from the prosecution case, prosecution has placed reliance upon the evidence of complainant Shri Bhikha Vira to show that he is a person, who had immediately approached the Police Patel and the Sarpanch of the village and he is the person, who has filed complaint before the Police.

8.2 As found from the cross examination of the witness that Vashram accused No.1 had three different fields at the outskirts of village Paladi and this land being an agricultural land. Accused No.2 was married to at village Desar and village Desar is at a distance of 5 Kms. from village Paladi where he resides. He had denied the suggestion that Jahi used to come on every 10 - 15 days as her parents house also situate in the village Paladi and he has admitted that Jahi was happy in the beginning after her marriage and according to him even after doing work at the filed, they are not giving sufficient food. The witness has admitted that prior to one year of the incident deceased Jahi had due to problem come to the house of her father and thereafter, the accused No.1 and his wife and Amarsinh Darbar came and a compromise was arrived at and Jahi was again send at her husband's house. However, the witness has denied that after the compromise Jahi has no problem and this fact is not stated in his further statement recorded by the Police.

9. On close scrutiny of the evidence of complainant P.W.2 Bhikha Vira it transpires that though he had first approached the Police Patel as well as Sarpanch of the village for filing complaint, no complaint or any document is proved by the prosecution to support the case of the complainant P.W.2 that immediately he approached the Sarpanch and, thereafter, the Police Patel. The fact disclosed by the complainant is not recorded by Police Patel and further that even the Police Patel had accompanied the complainant for filing complaint to

Police Station at Una and it is further borne out from the evidence that the Sarpanch and the Police Patel had also before proceeding to file complaint before the Police gone to the house of accused persons and verified the fact.

10. P.W.4 Rukhad Dana was Sarpanch of village Paladi, who knows the complainant and his brother and the accused persons. As found from his deposition that Bhikha Vira had come at his residence at 10.0 at night and informed him that his daughter Jahi is done to death and accordingly he went to the house of accused Vashram. He saw Jahi lying in a cot and she was dead and he inquired from Vashram about the same and Vashram had informed him that Jahi had some pain on her belly and Jahi had a vomitting and thereafter she died. At that time accused persons were not present. While returning to his home Police Patel Khodu Rana met him on the way and thereafter Bhikha Vira with Police Patel had gone to Police Station for filing complaint.

10.1 In cross examination it is found that when he was returning back from the house of accused Vashram and when Khodu Rana and Bhikha Vira met on the way and at that time they disclosed about the incident and he advised for filing complaint and he informed that when he has gone to the house of Vashram he has not seen any mark of injury. He is Sarpanch of the village for last six years and the brother of accused Vashram i.e. Kanabhai was Police Patel and, thereafter, he gave opinion to Khodu Rana and Khodu Rana was appointed as Police Patel. He had admitted that there are two groups in the village and leader of the rival group was the brother of accused No.1 i.e. Kana Ramsi.

11. On perusing the entire evidence it transpires that as per witness Kana Vira he has seen the incident when he was returning from village Ghogala to village Paladi at 9.0 night on 1.8.1985 and he saw the incident from the window of the back portion of the house of the accused No.1 and according to him lights were on and Jahi was found lying and accused Manu Vashram and Naran Vashram have tied the rope on the neck of Bai Jahi and they were pressing the said rope and all the remaining accused were standing. He told that what they were doing and at that time Vashram Ramsi threatened him and for the first time the police has taken his statement after 24 days.

12. The learned trial Judge has discussed the evidence of all the witnesses in detail and the evidence

of P.W.6 Kana Vira and the learned trial Judge has discarded his evidence mainly on the ground that though he has seen the incident on that night he has not disclosed this incident to anyone, though according to him he has disclosed this incident to his mother at night and not to any other person and for the first time his statement was recorded by the Police after 24 days of the incident. In fact the learned trial Judge has to observe that the investigating officer also does not inspire any confidence in respect of the version given by Kana Vira. The learned trial Judge has accordingly given cogent reason while not accepting the prosecution case, including the evidence of Kana Vira and the learned trial Judge has recorded finding that no evidence worth is led by the prosecution to convict the accused. The learned trial Judge has also in term held that no evidence is brought by the prosecution in respect of the allegation that Bai Jahi was unhappy at the house of the accused persons. The learned trail Judge has also considered that even the motive attributed by the prosecution is also not proved.

13. This being an acquittal Appeal and on close scrutiny of the evidence led by the prosecution as well as the evidence of Kana Vira P.W.6, who posed to be an eye witness, we are of the view that the learned trial Judge has rightly discarded his evidence. We are also of the view that no error is committed by the learned trial Judge while acquitting the accused persons. No other contention is raised by Mr.Raval.

14. Accordingly acquittal Appeal is hereby dismissed and the order of acquittal recorded by the learned Sessions Judge, Junagadh on 20.6.1986 in Sessions Case No. 89 of 1985 acquitting the accused from the offence under Section 302 read with Sections 34-201 of the I.P.C. is hereby confirmed. Bailable warrants issued against the accused stand cancelled.

(D.K.Trivedi,J)

(D.P.Buch,J)

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